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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,637	08/01/2002	Andrew J. Boron	716139.99	5337

27128 7590 01/12/2004

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,637

Applicant(s)

BORON, ANDREW J.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 7
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

This Office action is in response to the interview held on December 11, 2003 and the amendment filed December 23, 2003 (Paper No. 6).

Accordingly, applicant's arguments (in the paragraph bridging pages 15 and 16) concerning claims 7, 8, and 13 and the issue that the rejection of these claims in the final Office action, of October 24, 2003 (Paper No. 5), do not address "the dimensioning of the organizer at its dispensing end", i.e., the actual limitation, as in claim 7, is "forming a product retention opening at the front of each product channel... having a dimension less than the width of a respective product channel", have been considered. *Thus*, applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. *Hence*, the amendment filed December 23, 2003 (Paper no. 6) has been entered whereby claims 1-25 have been amended and claims 25-31 have been added.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 9, 11, 13, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language of the limitation "at least certain of said upright support members" in lines 5 and 14 of claim 1 is awkward thereby rendering the claim indefinite. It is noted that the claim does not require that the shelf be attached to both the front and rear support members.

Claim 9 recites the limitation "said display rack" in lines 2, 4, and 7. There is insufficient antecedent basis for this limitation in the claim. It is noted that line 1 sets forth a display rack "structure". This rejection is also applicable to claim 11, line 4.

Claim 13 is rendered indefinite by the limitation "when said shelf members are oriented in a gravity feed orientation". *In particular*, claim 12 recites that the shelf members can be attached in "either" a gravity feed orientation or horizontally. *Hence*, if a reference shows horizontally oriented shelf members, the reference would "read on" claim 12 but not on claim 13 since the limitation in claim 13 would then be contradictory to the limitation of claim 12.

It is unclear what structure is defined by the limitation "service" in line 2 of claim 26. It appears that perhaps "service" should be changed to --surface--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Flum '796.

Flum '796 discloses a display rack structure (see Figure 20) comprising a first subassembly (lower portion of Figure 20) having a pair of first front upright support members (158) and being adaptable to rest on the floor (at 176) and a pair of first rear upright support members (158); a second subassembly (top of Figure 2) having a pair of second front upright support members (154 and 156) and a pair of second rear upright support members (154 and 156) the second subassembly being adaptable to be supported by the first subassembly;

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connectors (generally at 160 and 142) cooperating with the first and second support members for removably attaching the first and second subassemblies together whereby the connectors include a plurality of stakes (160) associated with the second support members and sockets (near 142) associated with the first support members; a plurality of shelf members (146), carried vertically by each of the subassemblies and attached to the front support members of each subassembly, and inclined downwardly, whereby each shelf comprises a generally upwardly facing product support (at 168); the display rack structure also having front and rear *portions*, i.e., the sides of the display rack structure are considered to define portions; and the first subassembly, i.e., the base subassembly, comprising at least one brace member (at 148) secured to a rear portion thereof.

With respect to the recitation "for shipping" (in the last line of claim 1), it is noted that this recitation is merely functional, i.e., the claim(s) do(es) not positively require that the first subassembly be placed in a separate "box" or such which is shipped separately from the second subassembly which is placed in a separate "box" or such. *Hence*, since the subassemblies of Flum '796 are not permanently attached to one another they are considered to be "separate" from one another, as required in claim 1 and hence are considered to be capable of being shipped separately.

Claims 1, 3, 11, 12, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Unfried '153.

Unfried '153 discloses a display rack structure comprising a first subassembly (lower portion of Figure 1) having a pair of first front upright support members (2) and being adaptable to rest on the floor and a pair of first rear upright support members (2); a second subassembly

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(top of Figure 1) having a pair of second front upright support members (2) and a pair of second rear upright support members (2) the second subassembly being adaptable to be supported by the first subassembly; connectors (23 and 24 - see Figure 4) cooperating with the first and second support members for removably attaching the first and second subassemblies together whereby the connectors include a plurality of stakes (23) associated with the second support members and sockets (24) associated with the first support members; a plurality of shelf members (32), carried vertically by each of the subassemblies and attached to the front and rear support members of each subassembly, and disposed generally horizontally with generally upwardly facing product supports, i.e., the top surface of each shelf members is considered to define this element; the display rack structure also having front and rear *portions*, i.e., the sides of the display rack structure are considered to define portions; and the first subassembly, i.e., the base subassembly, comprising at least one brace member (25 and/or 22) secured to a rear portion thereof. With respect to claim 12, each of the upright support members (2) of each subassembly having opposed end portions whereby one end portion has a stake member (23) and the opposite end portion has a socket (24).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796, alone.

Flum '796 discloses the rack structure as advanced above.

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The claim differs from Flum '796 in requiring the connectors to define the first support members having stakes and the second support members having sockets.

Although Flum '796 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153, alone.

Unfried '153 discloses the rack structure as advanced above.

The claim differs from Unfried '153 in requiring the connectors to define the first support members having stakes and the second support members having sockets.

Although Unfried '153 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, and 11 above, and further in view of Battaglia *et al.* '307 (Figure 1).

Flum '796 discloses the rack structure as advanced above.

The claims differ from Flum '796 in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) and including at least one removable display panel (claim 6).

Battaglia *et al.* '307 (Figure 1) teach a rack comprising front (24) and rear (32) support members and a header assembly (110) comprising connector members (unnumbered - rounded corners of 110, below 112) which are cooperatively engageable with the support members whereby information can be stored therein (see column 6, lines 6-9).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly as taught by Battaglia *et al.* '307 (Figure 1), and a panel removably mountable thereto, for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

Claims 4, 6, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Varfolomeeva '387.

Unfried '153 discloses the rack structure as advanced above.

The claims differ from Unfried '153 in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) and including at least one removable display panel (claim 6).

Varfolomeeva '387 teaches a rack comprising support members (36, 38, 40) and a header assembly (22 and 20) comprising connector members (22) which are cooperatively engageable with the support members whereby information can be stored therein.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack structure of Unfried '153 with a header assembly as taught by Varfolomeeva '387, and a panel removably mountable thereto, for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

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Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, and 11 above, and further in view of Battaglia *et al.* '307 (Figure 1A).

Flum '796 discloses the rack structure as advanced above.

The claim differs from Flum '796 in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) whereby the connector members define sockets for receiving stakes of the support members.

Battaglia *et al.* '307 (Figure 1A) teach a rack comprising front (24) and rear (32) support members and a header assembly (26) which comprising connector members defining stakes (30) disposed in receiving sockets (at 28).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly, as taught by Battaglia *et al.* '307, with the header assembly comprising sockets (see MPEP 2144.04(VI)(A)), for ease in assembly.

Claims 7, 8, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, and 11 above, and further in view of Lee '170.

Flum '796 discloses the rack structure as advanced above.

The claims differ from Flum '796 in requiring the shelf members to include product channels (claim 7) forming a retention opening at the front thereof which has a dimension less than the width of the product channel, a first member including a product support surface and a second member defining spaced wire members forming guide rails that is removably attached to the first member (claim 8), and latch devices connecting the organizer member to the rack

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member (claim 26) whereby the latch device is defined by a rail secured to the organizer member (claim 27).

Lee '170 teaches a display rack comprising shelf members which include a first member (at 120) including a product support surface and a second member (at 30) defining spaced wire members forming guide rails that is removably attached to the first member whereby product receiving channels are formed (between adjacent elements 32) and each channel having a retention opening (horizontally extending between elements 34 and 36) whereby each opening (between 34 and 36) is dimensioned less than the width (see Figure 1 which clearly shows the vertical distance between elements 34 and 36 being less than the horizontal distance between adjacent elements 32) of the channel (between elements 32); the rack member (110 - see Figure 6) is attached to the organizer member (30) by cooperative latch devices (36 and 115) defined by a transversely extending rail member (36) disposed on the organizer member. It is noted that the claims do not require that the opening define a width within the channel that is less than the width of the channel itself nor do the claims require a function associated with the opening.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Flum '796 with first and second members forming product channels and openings, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

Claims 7, 8, 13, and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Lee '170.

Unfried '153 discloses the rack structure as advanced above.

The claims differ from Unfried '153 in requiring the shelf members to include product channels (claims 7 and 13) forming a retention (gate) opening at the front thereof which has a dimension less than the width of the product channel, a first member including a product support surface and a second member defining spaced wire members forming guide rails that is removably attached to the first member (claim 8), and latch devices connecting the organizer member to the rack member (claims 26 and 28) whereby the latch device is defined by a rail secured to the organizer member (claims 27 and 29).

Lee '170 teaches the display rack as advanced above. *With respect to claim 13*, it is noted that Lee '170 is considered to meet the limitations of the claim as best understood in view of the rejections under Section 112, as advanced above.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Unfried '153 with first and second members forming product channels and openings, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, and 11 above, and further in view of Bustos '191.

Flum '796 discloses the display rack structure as advanced above.

The claims differ from Flum '796 in requiring a plurality of side shelf members removably attachable in a cantilever manner to some of the support members of each subassembly.

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Bustos '191 teaches a display rack comprising side shelf members (20) that are removably attachable (at 13) to support members (11b) by a bracket (22b) in a cantilevered manner (by element 13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Flum '796 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

Claims 9, 10, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Bustos '191.

Unfried '153 discloses the display rack structure as advanced above.

The claims differ from Unfried '153 in requiring a plurality of side shelf members removably attachable in a cantilever manner to some of the support members of each subassembly.

Bustos '191 teaches the display rack as advanced above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Unfried '153 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

Claims 18-20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 in view Battaglia *et al.* '307 (Figure 1), Lee '170, and Bustos '191.

Flum '796 discloses the rack structure as advanced above.

The claims differ from Flum '796 in requiring: (a) a header assembly including a plurality of connector members engageable with at least some of the second support members and including at least one removable display panel (claim 18), (b) the shelf members to include a

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removably attached product organizer (claim 18), (c) at least one side shelf members removably attachable in a cantilever manner to some of the support members of each unit (claim 18), and (d) the connectors to define the first support members having stakes and the second support members having sockets (claim 19).

With respect to (a), Battaglia et al. '307 (Figure 1) teach the rack as advanced above.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly as taught by Battaglia et al. '307 (Figure 1), for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

With respect to (b), Lee '170 teaches the rack as advanced above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Flum '796 with first and second members forming product channels, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

With respect to (c), Bustos '191 teaches the rack as advanced above..

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Flum '796 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

With respect to (d), although Flum '796 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

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Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 in view Battaglia *et al.* '307 (Figure 1), Lee '170, and Bustos '191 as applied to claims 18-20 and 23-25 above, and further in view of Battaglia *et al.* '307 (Figure 1A).

The claims differ from the above references in requiring the upper end portions of the upper unit to comprise stakes and the lower portions of the header assembly to include sockets (claim 21) or the upper end portions of the upper unit to comprise sockets and the lower portions of the header assembly to include stakes (claim 22).

Battaglia *et al.* '307 (Figure 1A) teach the rack as advanced above.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly, as taught by Battaglia *et al.* '307, with the header assembly comprising sockets (see MPEP 2144.04(VI)(A)), for ease in assembly.

Claims 18-20, 23-25, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153 in view of Varfolomeeva '387, Lee '170, and Bustos '191.

Unfried '153 discloses the rack structure as advanced above.

The claims differ from Unfried '153 in requiring: (a) a header assembly including a plurality of connector members engageable with at least some of the second support members and including at least one removable display panel (claim 18), (b) the shelf members to include a removably attached product organizer (claim 18) and latch devices connecting the organizer member to the rack member (claim 30) whereby the latch device is defined by a rail secured to the organizer member (claim 31), (c) at least one side shelf members removably attachable in a cantilever manner to some of the support members of each unit (claim 18), and (d) the

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connectors to define the first support members having stakes and the second support members having sockets (claim 19).

With respect to (a), Varfolomeeva '387 teach the rack as advanced above.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Unfried '153 with a header assembly as taught by Varfolomeeva '387, for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

With respect to (b), Lee '170 teaches the rack as advanced above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Unfried '153 with first and second members forming product channels, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

With respect to (c), Bustos '191 teaches the rack as advanced above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Unfried '153 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

With respect to (d), although Unfried '153 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

Response to Arguments

Applicant's arguments filed December 23, 2003 (Paper No. 6) have been fully considered but they are not persuasive.

With respect to claim 1 and the Flum '796 reference, the argument (see the middle of the paragraph on page 15) that "there is no disclosure in this reference of rack subassemblies which come assembled including attached shelves whereby store workers can simply remove the subassemblies from a box and stack one on the other" is acknowledged. *However*, this argument is considered to be more limiting than what is actually being claimed since claim 1 does not recite the above mentioned language. In fact, the claim merely functionally recites "for shipping" in the last line of claim 1. It is noted that the shelves of Flum '796 being "laid on the shelf supports" are considered to be attached to the support members, as required by the claim, since the support members are attached to the shelf supports, the shelves would in turn be "attached" to the support members. It is further noted that the claims do not recite how the shelves are "attached" to the support members, i.e., directly thereto, by fasteners, permanently, etc.

With respect to Lee, applicant's arguments (see the paragraph bridging pages 15 and 16) concerning this reference and claims 7, 8, and 13 have been considered and thus the finality of the previous Office action has been withdrawn and Lee has been further advanced to meet the claimed limitations of these claims.

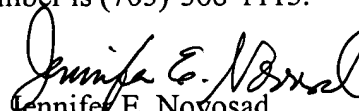
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
January 8, 2004